

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Mediacom Minnesota LLC	)	CSR 6876-E
	)	
	)	
Petition for Determination of Effective Competition	)	
in various Minnesota Local Franchise Areas	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 16, 2007**

**Released: July 20, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Mediacom Minnesota, LLC ("Mediacom") has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that its cable systems serving various Minnesota communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the "Communities").<sup>3</sup> Southern Minnesota Cable Commission<sup>4</sup> ("SMCC") filed an opposition, to which Mediacom replied.<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> In its opposition, SMCC asserted that Mediacom incorrectly included the City of Mantorville and Mantorville Township as part of the municipalities in the SMCC franchise area. By letter dated July 7, 2005, Mediacom requested withdrawal of its petition for a determination of effective competition insofar as it applies to the City of Mantorville, Minnesota and the Township of Mantorville, Minnesota.

<sup>4</sup> SMCC is a joint cable communications commission formed by a consortium of Minnesota municipalities that acts as a Local Franchising Authority for the four municipalities. The municipalities that comprise bodies of SMCC are the City of Blooming Prairie, City of Dodge Center, City of Kenyon, and the City of West Concord.

<sup>5</sup> On February 23, 2007, the Commission sent letters to various cable operators, including the above-captioned Mediacom petition, informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association ("SBCA") report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the

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2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>6</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>7</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>8</sup> Based on the record in this proceeding, Mediacom has met this burden, SMCC has failed to rebut it, and, accordingly, the petition is granted.

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>9</sup> Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>10</sup> The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.<sup>11</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>12</sup> We find further that Mediacom has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the "competing provider" test is satisfied.

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franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission's letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petition. No opposition to Mediacom's filing has been received by the Commission.

<sup>6</sup> 47 C.F.R. § 76.906.

<sup>7</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>8</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>9</sup> 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>11</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

<sup>12</sup> See 47 C.F.R. § 76.905(g).

4. In its opposition, SMCC objects to Mediacom's showing on the second element of the competing provider test. SMCC contends that Mediacom has not demonstrated the DBS penetration in the SMCC franchise area and, although Mediacom's petition purports to identify cable and DBS penetration in each community individually, underlying data is not provided.<sup>13</sup> SMCC also asserts that instead of serving its petition on all the communities at issue Mediacom served the City of Kenyon only.<sup>14</sup>

5. Mediacom states that it has substracted 102 DBS customers and 890 households that are in the City of Mantorville and Mantorville Township combined, to now determine that there are actually 507 DBS customers in the SMCC area, which is 19.63% of the 2,583 occupied households.<sup>15</sup> With regard to the assertion that Mediacom has not met its burden because zip code information that Mediacom provided to the Satellite Broadcasting and Communications Association ("SBCA") was not verified with data and accurate for the jurisdictional boundaries of the SMCC, Mediacom asserts that the zip+4 provided to SBCA only included those zip+4's that can be determined with the strongest certainty to be within the city boundaries.<sup>16</sup> In response to SMCC's contention that service was not proper, Mediacom states that serving its petition only on the City of Kenyon was done pursuant to the Franchise Agreement between Mediacom and SMCC, which instructed Mediacom to do so in order to achieve service on the SMCC.<sup>17</sup>

6. As noted, Mediacom requested removal of the City of Mantorville and the Township of Mantorville from its petition for a determination of effective competition. Consequently, after providing new data we find that Mediacom has demonstrated the number of DBS subscribers within the SMCC franchise area. Moreover, with regard to SMCC's assertion that corroborating data and information verifying DBS subscriber numbers was not provided, we do not find this objection persuasive. The Commission has routinely accepted, without additional corroborating evidence, the kind of DBS penetration data that Mediacom has provided from the SBCA as reliable evidence for an effective competition determination. In addition, service was proper as the Franchise Agreement between Mediacom and SMCC indicated the City of Kenyon is the location where notice and documents should be sent to serve on SMCC.

7. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in the Communities by using a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. Mediacom asserts that it is the largest MVPD in the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient

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<sup>13</sup> SMCC Opposition at 2.

<sup>14</sup> *Id.*

<sup>15</sup> Mediacom Reply at 2.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 4.

evidence demonstrating that its cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom Minnesota LLC listed on Attachment A for a determination of effective competition in the Communities listed thereon **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operator **IS REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>18</sup>47 C.F.R. § 0.283.

## Attachment A

Cable Operator Subject to Competing Provider Effective Competition**MEDIACOM MINNESOTA LLC: CSR 6876-E**

<b>Communities</b>	<b>CUIDS</b>	<b>2000 Census CPR*</b>	<b>DBS Households<sup>+</sup></b>	<b>Subscribers<sup>+</sup></b>
Southern Minnesota Cable Commission- consisting of 4 communities:				
Blooming Prairie	MN0342	19.63%	507	2,583
Dodge Center	MN0341			
Kenyon	MN0446			
West Concord	MN0541			
Cannon Falls	MN0445	22.39%	347	1,550

CPR\* = Percentage of DBS penetration

+ = See Cable Operator Petitions